



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

By Facsimile (202) 434-1690 and First Class Mail

OCT 1 0 2008

Brian G. Svoboda, Esq.
Ezra W. Reese, Esq.
Perkins Coie
607 Fourteenth Street, N.W.
Washington, DC 20005-2011

RE: MUR 5840
Ellen Simon for Congress
and Gael Summer, in his
official capacity as
treasurer;
Ellen Simon

Dear Messrs. Svoboda and Reese:

On August 1, 2007, your clients were notified that the Federal Election Commission found reason to believe that: Ellen Simon for Congress and its treasurer ("the Committee") violated 2 U.S.C. § 434(b) by misreporting a \$50,000 loan from Ellen Simon ("the Candidate") and a \$225,000 bank loan guaranteed by the Candidate, as contributions from the Candidate, and by failing to exercise best efforts in obtaining contributor information; and, the Committee and the Candidate, each violated 2 U.S.C. § 441a-1(b) for the untimely filing of the Form 10.

General Counsel's Briefs indicating that we were prepared to recommend that the Commission find probable cause to believe that your clients violated 2 U.S.C. §§ 434(b) and 441a-1(b). You did not submit response briefs, but requested a stay of the enforcement proceedings pending the Supreme Court's decision in *Davis v. FEC*.

On June 26, 2008, the Supreme Court issued its decision in *Davis v. FEC*, 128 S. Ct. 2759 (2008) and found Sections 319(a) and 319(b) of the Bipartisan Campaign Reform Act of 2002 — the so-called "Millionaires' Amendment" — unconstitutional because they violate the First Amendment to the U.S. Constitution. Therefore, after considering the circumstances of this matter, the Commission determined on September 11, 2008, to take no further action as to the Committee and the Candidate in connection with 2 U.S.C. § 441a-1(b). Because this was the Commission's only finding

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with respect to the Candidate, the Commission also determined to close the file as to the Candidate.

We intend to recommend that the Commission take no further action with regard to the 2 U.S.C. § 434(b) violation for the Committee's failure to submit adequate contributor information

However, as previously stated, the Commission also found reason to believe the Committee violated 2 U.S.C. § 434(b) for the misreporting of the \$50,000 loan from the Candidate and the \$225,000 bank loan guaranteed by the Candidate.

If you have any questions, please contact me at (202) 694-1650.

Sincerely,

Dominique Dillenseger

Dominique Dillenseger
Attorney

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